

Honorable Judge Benjamin H. Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE
SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK COUNTY
PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE
COUNTY OF CLARK, SHIRLEY
SPENCER, and JOHN DOES ONE
THROUGH TEN,

Defendants.

NO. C11-5424-BHS

DECLARATION OF JEFFREY
FREIMUND IN SUPPORT OF
SUMMARY JUDGMENT FOR
DEFENDANTS

NOTE ON MOTION
CALENDAR: June 22, 2012

Pursuant to 28 U.S.C. § 1746, JEFFREY FREIMUND, declares under penalty of perjury under the laws of the State of Washington and the United States of America that the following is true and accurate:

1. I am an attorney representing defendant Michael Davidson in the above-captioned matter. I am over the age of 18, competent to testify about the matters stated herein, and make this declaration based on my personal knowledge.

1 2. Attached to this declaration as Exhibit 1 is a true and accurate copy of King County
2 Prosecuting Attorney Rebecca Roe's November 27, 1984 written opinion there was insufficient
3 evidence to obtain a conviction against Clyde Ray Spencer based on the initial disclosures of
4 sexual abuse made by Kathryn Tetz (nee Spencer).

5
6 3. Attached to this declaration as Exhibit 2 is a true and accurate copy of the criminal
7 Information filed by the Clark County Prosecuting Attorney's office on January 3, 1985
8 charging Mr. Spencer with two counts of sexually abusing Kathryn Tetz (nee Spencer), as well
9 as a true and accurate copy of a January 3, 1985 court order releasing Mr. Spencer on personal
10 recognizance for the charged crimes.

11 4. Attached to this declaration as Exhibit 3 is a true and accurate copy of Mr. Spencer's
12 January 8, 1985 Notice of Dismissal from the Vancouver Police Department, along with a
13 January 15, 1985 Bill of Particulars further identifying the reasons for Mr. Spencer's
14 termination from employment.

15
16 5. Attached to this declaration as Exhibit 4 is a true and accurate copy of the Motion
17 and Affidavit for Order Authorizing Issuance of Warrant of Arrest for Mr. Spencer, which was
18 filed by the Clark County Prosecuting Attorney's office on February 28, 1985.

19
20 6. Attached to this declaration as Exhibit 5 is a true and accurate copy of the Clark
21 County Superior Court's Warrant of Arrest finding probable cause for the issuance of an arrest
22 warrant for Mr. Spencer, which was filed on February 28, 1985 and executed the same day by
23 the Clark County Sheriff's office.

24 7. Attached to this declaration as Exhibit 6 is a true and accurate copy of the Second
25 Amended Information charging Mr. Spencer with ten counts of first degree statutory rape and
26

1 six counts of complicity to first degree statutory rape, which was filed by the Clark County
2 Prosecuting Attorney's office on May 3, 1985.

3 8. Attached to this declaration as Exhibit 7 is a true and accurate copy of Mr. Spencer's
4 Statement of Defendant on Plea of Guilty to seven counts of first degree statutory rape and four
5 counts of first degree complicity to statutory rape, which was filed with the Court on May 16,
6 1985.

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8 9. Attached to this declaration as Exhibit 8 is a true and accurate copy of the certified
9 transcript of Clark County Superior Court proceedings concerning the May 3, 1985 filing of
10 the Second Amended Information, the May 16, 1985 change of plea hearing during which Mr.
11 Spencer pled guilty and the Court accepted his plea, and the May 23, 1985 sentencing hearing.

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13 10. Attached to this declaration as Exhibit 9 is a true and accurate copy of Mr.
14 Spencer's Judgment and Sentence on Counts I and II in the Second Amended Information, and
15 his Judgment and Sentence on Counts III, VII, IX, XII, XIII, XIV, XV and XVI in the Second
16 Amended Information, both of which were filed with the Court on May 23, 1985.

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18 11. Attached to this declaration as Exhibit 10 is a true and accurate copy of the state
19 Court of Appeals Order Dismissing Petition by Mr. Spencer and rejecting his claims that his
20 conviction should be vacated as unconstitutional, which was entered on August 16, 1988.

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22 12. Attached to this declaration as Exhibit 11 is a true and accurate copy of the state
23 Court of Appeals Order Dismissing Petition by Mr. Spencer challenging the length of his
24 sentence, which was entered on September 28, 1989.

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26 13. Attached to this declaration as Exhibit 12 is a true and accurate copy of the state
Supreme Court's Ruling Denying Motion for Discretionary Review of Mr. Spencer's

1 unsuccessful appeal challenging the length of his sentence (*i.e.*, Exhibit 11), which was entered
2 on November 30, 1989.

3 14. Attached to this declaration as Exhibit 13 is a true and accurate copy of U.S.
4 District Court Judge Robert Bryan's December 23, 1994 Judgment and Order denying Mr.
5 Spencer's habeas corpus petition and the federal Magistrate's Report and Recommendation
6 regarding the same, which was adopted by Judge Bryan.

7 15. Attached to this declaration as Exhibit 14 is a true and accurate copy of the Ninth
8 Circuit Court of Appeals Memorandum filed on November 30, 1995, affirming in part and
9 reversing in part Judge Bryan's December 23, 1994 Order (*i.e.*, Exhibit 12), and remanding in
10 part for an evidentiary hearing.

11 16. Attached to this declaration as Exhibit 15 is a true and accurate copy of U.S.
12 District Court Judge Robert Bryan's September 2, 1996 Judgment and Order Including
13 Findings of Fact and Conclusions of Law, denying Mr. Spencer's habeas corpus petition in its
14 entirety following the partial reversal and remand for an evidentiary hearing ordered by the
15 Ninth Circuit Court of Appeals.

16 17. Attached to this declaration as Exhibit 16 is a true and accurate copy of the Ninth
17 Circuit Court of Appeals Memorandum filed on October 30, 1997, affirming Judge Bryan's
18 final judgment denying Mr. Spencer's habeas corpus petition.

19 18. Attached to this declaration as Exhibit 17 is a true and accurate copy of the state
20 Court of Appeals Order Dismissing Petition by Mr. Spencer and rejecting his claims that the
21 Indeterminate Sentence Review Board improperly added 60 months to his minimum term of
22 imprisonment due to his inability to demonstrate rehabilitation.

1 19. Attached to this declaration as Exhibit 18 is a true and accurate copy of former
2 Governor Locke's Conditional Commutation of Mr. Spencer's remaining sentence of
3 imprisonment, which is dated December 23, 2004.

4 20. Attached to this declaration as Exhibit 19 is a true and accurate copy of plaintiff
5 Matthew Spencer's March 2, 2003 letter to former Governor Locke urging the Governor to
6 deny clemency for his father.

7 21. Attached to this declaration as Exhibit 20 is a true and accurate copy of the state
8 Court of Appeals Order Transferring Petition for a Reference Hearing to determine whether his
9 two biological children would testify consistent with their recantations of abuse by Mr.
10 Spencer, which was filed on April 7, 2009.

11 22. Attached to this declaration as Exhibit 21 is a true and accurate copy of the state
12 Court of Appeals Order Clarifying Reference Hearing Order denying the State's request to
13 present evidence or offer previous court rulings pertaining to Mr. Spencer, which was filed on
14 April 29, 2009.

15 23. Attached to this declaration as Exhibit 22 is a true and accurate copy of the Clark
16 County Superior Court's Findings of Fact on Reference Hearing, which was filed on July 13,
17 2009.

18 24. Attached to this declaration as Exhibit 23 is a true and accurate copy of the Clark
19 County Superior Court's Order Denying the State's Motion for Reconsideration asking the
20 Court to make findings on whether the two recantations were credible, which was filed on July
21 28, 2009.

22 25. Attached to this declaration as Exhibit 24 is a true and accurate copy of the state
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1 Supreme Court Commissioner's Ruling Denying Review of the State's petition for
2 discretionary review of the Court of Appeals' ruling following the reference hearing (*i.e., In re*
3 *Clyde R. Spencer*, 152 Wash. App. 698, 218 P.3d 924 (2009)), which was filed on July 12,
4 2010.

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6 26. Attached to this declaration as Exhibit 25 is a true and accurate copy of the Clark
7 County Superior Court's Order filed on September 29, 2010, granting Mr. Spencer's motion to
8 vacate his guilty plea and vacating his Judgment and Sentence.

9 27. Attached to this declaration as Exhibit 26 is a true and accurate copy of the Clark
10 County Superior Court's Order filed on September 29, 2010, granting the Clark County
11 Prosecuting Attorney office's motion to dismiss the 1985 criminal Information without
12 prejudice.

13
14 SIGNED this 11th day of May, 2012 in Olympia, WA.

15
16 s/Jeffrey A. O. Freimund
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